Supreme Court, U.S.
FILED

961381 JAN 30 1997

No. ____-____

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

CONSTRUCTION INDUSTRY TRAINING COUNCIL OF WASHINGTON, a Washington non-profit corporation,

Petitioner,

vs.

SEATTLE BUILDING AND CONSTRUCTION TRADES COUNCIL; PAINTERS DISTRICT COUNCIL NO. 5; PUGET SOUND ELECTRICAL APPRENTICESHIP AND TRAINING TRUST; SEATTLE AREA PLUMBING AND PIPEFITTING INDUSTRY JOURNEYMAN AND APPRENTICE TRAINING COMMITTEE; SNO-KING SHEET METAL JOINT APPRENTICESHIP AND TRAINING COMMITTEE; WASHINGTON STATE APPRENTICESHIP AND TRAINING COUNCIL,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

Judd H. Lees*
Kurt E. Linsenmayer
WILLIAMS, KASTNER & GIBBS LLP
P.O. Box 21926
Seattle, WA 98111-3926
(206) 628-6600

*Counsel of Record

aBCD Legal Printers, Seattle, Washington

64 pp

QUESTIONS PRESENTED FOR REVIEW

1. Did the Washington Supreme Court err in refusing to apply preemption under the Employee Retirement Income Security Act to state-mandated benefits, which were the basis for determining that state approval of apprenticeship training programs constituted a "license" under the state's administrative procedures act.

2. Does the Employee Retirement Income Security Act preempt the Washington Supreme Court's imposition of an additional requirement of an adjudicative hearing outside the standards of the National Apprenticeship Act and its authority granted by the federal Bureau of Apprenticeship and Training in implementing the National Apprenticeship Act.

3. Does the Washington Supreme Court's granting of standing to competitors of apprenticeship training programs and creation of a requirement that an adjudicative hearing be held prior to approving such programs, interfere with the effective nationwide application of the National Apprenticeship Act.

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW i

OPINIONS BELOW 2

STATEMENT OF JURISDICTION 4

RELEVANT CONSTITUTIONAL PROVISIONS AND STATUTES 5

STATEMENT OF THE CASE 5

A. Factual Background 5

B. Procedural Background 6

REASONS FOR GRANTING THE WRIT 8

A. The Washington Supreme Court's Refusal to Apply ERISA Preemption to Its Analysis of the State Regulation of an ERISA Plan Raises an Important Federal Question Because It Conflicts with Decisions of at Least Three United States Courts of Appeals and the California Supreme Court. 10

1. CITC's apprenticeship training programs are ERISA plans 12

2. The Washington laws cited by the Washington Supreme Court "relate to" the apprenticeship training programs 12

3. The Washington laws cited by the Washington Supreme Court are not saved from ERISA preemption 14

B. The Question Whether the Washington Supreme Court's Imposition of an Adjudicative Hearing Requirement to Obtain Approval of Apprenticeship Training Programs Is Preempted by ERISA Is an Important Federal Question That Has Not, But Should Be, Decided by This Court 15

1. The adjudicative hearing requirement imposed by the Washington Supreme Court "relates to" the apprenticeship training programs 16

2. The adjudicative hearing requirement imposed by the Washington Supreme Court is not saved from ERISA preemption 17

C. The Question Whether the Washington Supreme Court's Imposition of an Adjudicative Hearing Requirement Interferes with the Effective Nationwide Application of the National Apprenticeship Act Is an Important Federal Question Which Has Not Been, But Should Be, Decided By This Court. . . . 19

CONCLUSION 22

TABLE OF AUTHORITIES

CASES

ABC Nat'l Line Erection Apprenticeship Training Trust v. Aubry, 68 F.3d 343 (9th Cir. 1995) 13

Boise Cascade Corp. v. Peterson, 939 F.2d 632 (8th Cir. 1991), *cert. denied*, 505 U.S. 1213, 112 S. Ct. 3014, 120 L. Ed. 2d 887 (1992) 11, 12

Dillingham Constr. N.A., Inc. v. County of Sonoma, 57 F.3d 712 (9th Cir. 1995), *cert. granted*, 116 S. Ct. 1415, 134 L. Ed. 2d 541 (1996) 9, 13

Electrical Joint Apprenticeship Comm. v. MacDonald, 949 F.2d 270 (9th Cir. 1991), *cert. denied*, 505 U.S. 1204, 112 S. Ct. 2991, 120 L. Ed. 2d 869 (1992) 7, 13, 16-18

Hydrostorage v. Northern Cal. Boilermakers, 891 F.2d 719 (9th Cir. 1989), *cert. denied*, 498 U.S. 822, 111 S. Ct. 72, 112 L. Ed. 2d 46 (1990) 11-14, 17

Inland Empire Chapter of Associated Gen. Contractors of Am. v. Dear, 77 F.3d 296 (9th Cir. 1996) 13

Mackey v. Lanier Collections Agency & Service, 486 U.S. 825, 108 S. Ct. 2182, 100 L. Ed. 2d 836 (1988) 14, 16

Nat'l Elevator Indus., Inc. v. Calhoon, 957 F.2d 1555 (10th Cir.), *cert. denied*, 506 U.S. 953, 113 S. Ct. 406, 121 L. Ed. 2d 331 (1992) 10, 12-14, 17

Seattle Bldg. and Constr. Trades Council v. Washington State Apprenticeship and Training Council, 129 Wn.2d 787, 920 P.2d 581 (1996) 4, 8, 10, 21

Seattle Bldg. and Constr. Trades Council v. Washington State Apprenticeship and Training Council, King County Sup. Ct. Cause No. 94-2-18464-4 (6/21/95) 3

Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 103 S. Ct. 2890, 77 L. Ed. 2d 490 (1983) 11, 14, 17

Southern Calif. Chapter of Associated Builders and Contractors, Inc., Joint Apprenticeship Comm. v. California Apprenticeship Council, 4 Cal. 4th 422, 841 P.2d 1011, 14 Cal. Rptr. 2d 491 (1992) 11, 12, 14, 17

CONSTITUTIONS, STATUTES AND RULES

29 C.F.R. § 29.1 *et seq.* 19

29 C.F.R. § 29.12 19

29 C.F.R. § 29.12(a)(5) 19

29 C.F.R. § 29.5 18-20

28 U.S.C. § 1257(a) 4

28 U.S.C. § 2101(c) 4

29 U.S.C. § 50 . . . . . 3, 5, 20, 21

29 U.S.C. §§ 1001 *et seq.* 7

29 U.S.C. § 1002(1) 12

29 U.S.C. § 1002(3) 12

29 U.S.C. § 1102(1) 5

29 U.S.C. § 1102(3) 5

29 U.S.C. § 1144 5

29 U.S.C. § 1144(a) 11, 12

29 U.S.C. § 1144(c)(1) 15

29 U.S.C. § 1144(d) 11, 14, 15, 17, 18

Sup. Ct. R. 10(b) 8

Sup. Ct. R. 10(c) 8

Sup. Ct. R. 13.1 4

Sup. Ct. R. 13.3 4

WASH. REV. CODE Ch. 34.05 3

WASH. REV. CODE Title 51 13

WASH. REV. CODE § 19.28.610 . . . . . 5, 10, 11, 13

WASH. REV. CODE § 39.12.021 . . . . . 5, 7, 10, 11, 13

WASH. REV. CODE § 49.04.030(1) 21

WASH. REV. CODE § 51.12.130 . . . . . 5, 10, 11, 13, 14

OTHER AUTHORITIES

U.S. Dept. of Lab., Emp. & Training Admin.: Bureau of Apprenticeship & Training, Directory (Jan. 1995) 20

No. ____-_____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

CONSTRUCTION INDUSTRY TRAINING COUNCIL OF WASHINGTON, a Washington non-profit corporation,

Petitioner,

vs.

SEATTLE BUILDING AND CONSTRUCTION TRADES COUNCIL; PAINTERS DISTRICT COUNCIL NO. 5; PUGET SOUND ELECTRICAL APPRENTICESHIP AND TRAINING TRUST; SEATTLE AREA PLUMBING AND PIPEFITTING INDUSTRY JOURNEYMAN AND APPRENTICE TRAINING COMMITTEE; SNO-KING SHEET METAL JOINT APPRENTICESHIP AND TRAINING COMMITTEE; WASHINGTON STATE APPRENTICESHIP AND TRAINING COUNCIL,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

OPINIONS BELOW

On March 21, 1995, King County Superior Court Judge James W. Bates, Jr., orally granted the petition of the Union Respondents[1] to nullify and void Respondent Washington State Apprenticeship and Training Council's ("WSATC")[2] approval of Petitioner Construction Industry

---

[1] Respondents Seattle Building and Construction Trades Council and Painters District Council No. 5 are two union councils who, among other things, sponsor various apprenticeship training programs for various building trade crafts in Washington State's construction industry. Respondents Puget Sound Electrical Apprenticeship and Training Trust, Seattle Area Plumbing and Pipefitting Industry Journeyman and Apprentice Training Committee and Sno-King Sheet Metal Joint Apprenticeship and Training Committee are three joint labor-management apprenticeship and training committees in Washington State for apprenticeship training programs in the electrical, plumbing/heating and sheet metal trades, respectively. All five of these Respondents are collectively referred to in this Petition as the "Union Respondents." The Union Respondents are competitors of Petitioner Construction Industry Training Council for purposes of, among other things, competitively bidding on and performing public works contracts.

[2] The WSATC is a state agency whose function, among others, is to administer the federal and state approval of apprenticeship training programs in Washington State.

Training Council's ("CITC")[3] apprenticeship training programs and to remand the approval of CITC's programs to the WSATC for an adjudicative hearing under Washington's Administrative Procedures Act, WASH. REV. CODE Ch. 34.05 ("State APA"). The WSATC had never before required an adjudicative hearing in conjunction with approving an apprenticeship program, nor had the federal Bureau of Apprenticeship and Training ("BAT") authorized the WSATC under the National Apprenticeship Act, 29 U.S.C. § 50 ("National Apprenticeship Act"), to conduct hearings prior to such approvals.

CITC and the WSATC filed motions for reconsideration, which Judge Bates granted. On June 21, 1995, the court dismissed the Union Respondents' petition. *See* Findings of Fact, Conclusions of Law and Order (unpublished), *Seattle Bldg. and Constr. Trades Council v. Washington State Apprenticeship and Training Council*, King County Sup. Ct. Cause No. 94-2-18464-4 (6/21/95), reproduced as Appendix B, pp. 1b-4b.

On April 10, 1996, the Washington Supreme Court accepted direct review.[4] On August 8, 1996, the

---

[3] CITC is a Washington non-profit corporation whose principal place of business is in Washington. CITC sponsors apprenticeship training programs for non-union contractors bidding on and performing state public works contracts for Washington. CITC does not maintain any corporate parent or subsidiary relationships.

[4] In the proceedings before both the superior court and the Washington Supreme Court, the Union Respondents were the "Petitioners," the WSATC was the "Respondent"

Washington Supreme Court filed its opinion reversing the trial court's order, setting aside WSATC's approval of CITC's apprenticeship training programs and remanding for a formal adjudicative hearing under the State APA on CITC's and all subsequent applications for approval of apprenticeship training programs. *Seattle Bldg. and Constr. Trades Council v. Washington State Apprenticeship and Training Council*, 129 Wn.2d 787, 920 P.2d 581 (1996), attached as Appendix A, pp. 1a-19a.

CITC timely filed a motion for reconsideration. The Washington Supreme Court entered its order denying the motion for reconsideration on November 1, 1996.[5] A copy of the order is attached as Appendix C, p. 1c.

STATEMENT OF JURISDICTION

Pursuant to 28 U.S.C. § 2101(c) and Sup. Ct. R. 13.1 and Sup. Ct. R. 13.3, this Petition for writ of certiorari is timely filed, having been filed within 90 days of the Washington Supreme Court's denial of CITC's motion for reconsideration. Jurisdiction is conferred on this court by 28 U.S.C. § 1257(a).

---

and CITC was the "Respondent/Intervenor."

[5] The original order, which contained a typographical error showing a signature date of October 1, 1996, has been corrected by the court to accurately reflect that November 1, 1996 was the date it was signed and entered. *See* Appendix C, p. 2c.

RELEVANT CONSTITUTIONAL PROVISIONS AND STATUTES

Appendix D contains the following relevant statutory provisions:

(1) The definitions of "employee benefit plan" and "employee welfare benefit plan" of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1102(1) and (3), p. 1d;

(2) The preemption provisions of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1144, the preemption provisions, pp. 2d-6d;

(3) The National Apprenticeship Act, 29 U.S.C. § 50, p. 7d;

(4) Washington statutes regarding treatment of apprentices within a state-approved apprenticeship training program, WASH. REV. CODE § 39.12.021 (payment of prevailing wages), § 51.12.130 (workers' compensation coverage) and § 19.28.610 (performance of certain electrical utility work without a license), pp. 8d-12d.

STATEMENT OF THE CASE

A. Factual Background.

Petitioner CITC's six apprenticeship training programs material to this case cover apprentices in the

carpentry, electrical, sheet metal, plumbing, painting and heating/air conditioning crafts. These programs received federal approval from the BAT on December 20, 1985.

On December 6, 1993, CITC applied to the WSATC for state approval of those six apprenticeship training programs. On April 22, 1994, WSATC conditionally granted approval to CITC's programs. After CITC made certain changes to its programs, which the WSATC requested, the WSATC notified CITC on June 28, 1994 that CITC had satisfied the necessary conditions to receive final approval and could begin indenturing apprentices.

Thereafter, numerous contractors joined CITC so that they could participate in CITC's apprenticeship training programs and competitively bid on and perform public works contracts.

B. Procedural Background.

On May 18, 1994, the Union Respondents filed a petition for review in the Superior Court of King County, Washington, alleging that the WSATC's approval activity qualified as a licensing function, and that the WSATC violated the State APA because it approved CITC's apprenticeship training programs without a formal adjudicative hearing.

On March 21, 1995, the superior court entered an oral ruling granting the Union Respondents' petition. CITC and the WSATC, however, moved for reconsideration, which the superior court granted. On June 21, 1995, the superior court dismissed the Union Respondents' petition. *See* Appendix B.

On July 14, 1995, the Union Respondents filed a notice of appeal and sought direct review by the Washington Supreme Court. The Washington Supreme Court accepted direct review and, on May 1, 1996, requested supplemental briefing as to the effect of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 *et seq.* ("ERISA") on Washington's approval scheme for apprenticeship training programs. In CITC's supplemental briefing, it asserted that, under the factually analogous case of *Electrical Joint Apprenticeship Comm. v. MacDonald*, 949 F.2d 270 (9th Cir. 1991), *cert. denied*, 505 U.S. 1204, 112 S. Ct. 2991, 120 L. Ed. 2d 869 (1992), ERISA preempted Washington's prevailing wage law as applied to apprenticeship training programs under WASH. REV. CODE §§ 39.12.021, Appendix D at p. 8d. *See* Supplemental Brief of Intervenor-Respondent.

On August 8, 1996, the Washington Supreme Court filed its opinion, reversing the trial court's order, setting aside the WSATC's approval of CITC's apprenticeship programs and remanding the case for an adjudicative hearing under the State APA. *See* Appendix A at p. 15a. Despite its request for specific briefing, the Washington Supreme Court failed to decide the ERISA preemption issue, dealing with it only in a footnote, stating:

> The Ninth Circuit recently held that insofar as RCW 39.12.021 provides that employers of apprentices cannot pay them less than journey level workers' prevailing wage rate on public works projects absent their participation in an approved apprenticeship program, the statute is preempted by [ERISA]. *Inland Empire Chapter of Associated Gen. Contractors v. Dear*, 77

> F.3d 296 (9th Cir. 1996). The mandate in *Inland Empire* has been stayed pending review by the United States Supreme Court of *Dillingham Constr. N.A., Inc. v. County of Sonoma*, 57 F.3d 712 (9th Cir. 1995), *cert. granted*, 116 S. Ct. 1415, 134 L. Ed. 2d 541 (1996), holding a similar California prevailing wage law preempted by ERISA. Whether ultimately the Court's decision in *Dillingham* invalidates or even affects RCW 39.12.021 remains to be seen. Our decision in this case does not depend upon the validity of that statute, as it is not the only statute conditioning coverage on [the WSATC] approval of an apprenticeship program.

129 Wn.2d at 800 n.2, Appendix A at pp. 16a-17a.

On August 28, 1996, CITC filed a motion for reconsideration, which the court denied on November 1, 1996. *See* Appendix C.

REASONS FOR GRANTING THE WRIT

This Petition for Writ of Certiorari should be granted under Sup. Ct. R. 10(b) and 10(c) because the Washington Supreme Court has decided important questions of federal law in a way that conflicts with decisions of at least three United States courts of appeals and of another state court of last resort and which have not

been, but should be, settled by this Court.[6]

---

[6] This Court is presently considering *Dillingham Constr. N.A., Inc. v. County of Sonoma*, 57 F.3d 712 (9th Cir. 1995), *cert. granted*, 116 S. Ct. 1415, 134 L. Ed. 2d 541 (1996), a case involving the issue of whether ERISA preempts a state prevailing wage law that requires payment of prevailing wages to employees in apprenticeship training programs but allows the payment of lower wages to employees participating in state-approved programs. The Court's decision in *Dillingham* may or may not resolve the important federal questions involved in this petition, which arise out of facts distinguishable from the facts present in *Dillingham*. Unlike the regulation of the apprenticeship training programs in Nevada at issue in *Dillingham*, the Washington Supreme Court has imposed a requirement of an adjudicative proceeding before approval of CITC's apprenticeship training programs, a requirement which the National Apprenticeship Act does not impose and the BAT has not approved. In addition, the apprenticeship training programs in *Dillingham* are not BAT-approved. Because this Court's ultimate decision in *Dillingham* may or may not resolve the important federal questions raised here, CITC respectfully requests this Court to either grant this petition while *Dillingham* is pending or, in the alternative, stay its decision on this petition until *Dillingham* is decided.

A. The Washington Supreme Court's Refusal to Apply ERISA Preemption to Its Analysis of the State Regulation of an ERISA Plan Raises an Important Federal Question Because It Conflicts with Decisions of at Least Three United States Courts of Appeals and the California Supreme Court.

The Washington Supreme Court erroneously assumed that its decision did not depend on whether ERISA preempted WASH. REV. CODE § 39.12.021, Appendix D at p. 8d (despite the Washington Supreme Court's request for supplemental briefing on this subject) because other Washington statutes also condition their benefits on approval of apprenticeship training programs by the WSATC, thereby supposedly supporting the court's State APA analysis. Although in its footnote concerning ERISA preemption the court did not specify which other statutes it was referencing, 129 Wn.2d at 800 n.2, Appendix A at pp. 16a-17a, earlier in the opinion it cited to WASH. REV. CODE § 51.12.130 and WASH. REV. CODE § 19.28.610, Appendix D at pp. 9d-12d. 129 Wn.2d at 791, Appendix A at p. 12a.

However, a correct application of ERISA's preemption clause establishes that the Washington Supreme Court put the cart before the horse in refusing to apply ERISA preemption to all the Washington statutes cited by the court before deciding that the WSATC must first conduct an adjudicative hearing under the State APA. Under controlling law from the Eighth, Ninth and Tenth Circuits, as well as the California Supreme Court, ERISA preempts any number of state laws relating to apprenticeship training programs. *See, e.g., Nat'l Elevator Indus., Inc. v. Calhoon,* 957 F.2d 1555, 1557 n.1 (10th

Cir.), *cert. denied*, 506 U.S. 953, 113 S. Ct. 406, 121 L. Ed. 2d 331 (1992) (ERISA preempts prevailing wage law only applicable to apprentices in a state approved apprenticeship training program); *Boise Cascade Corp. v. Peterson*, 939 F.2d 632 (8th Cir. 1991), *cert. denied*, 505 U.S. 1213, 112 S. Ct. 3014, 120 L. Ed. 2d 887 (1992) (ERISA preempts requirement of specific jobsite ratio of journeymen to apprentices); *Hydrostorage v. Northern Cal. Boilermakers*, 891 F.2d 719 (9th Cir. 1989), *cert. denied*, 498 U.S. 822, 111 S. Ct. 72, 112 L. Ed. 2d 46 (1990) (ERISA preempts prevailing wage law only applicable to apprentices in a state approved apprenticeship training program); *Southern Calif. Chapter of Associated Builders and Contractors, Inc., Joint Apprenticeship Comm. v. California Apprenticeship Council*, 4 Cal. 4th 422, 841 P.2d 1011, 14 Cal. Rptr. 2d 491 (1992) (ERISA preempts state prohibition against approval of new apprenticeship training programs only if they do not have an "adverse effect" on existing programs).

The determination of whether ERISA preempts a particular state law involves scrutiny of three underlying questions: (1) is there an ERISA plan; (2) does the state law "relate to" the ERISA plan; and (3) is the state law "saved" from ERISA preemption because its preemption would impair another federal law. *See* 29 U.S.C. § 1144(a) and (d); *see also Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 96, 103 S. Ct. 2890, 77 L. Ed. 2d 490 (1983). As set forth below, there can be no dispute that WASH. REV. CODE § 51.12.130 and WASH. REV. CODE § 19.28.610, Appendix D at pp. 9d-12d, as well as WASH. REV. CODE § 39.12.021, Appendix D at p. 8d, (the only statute of real financial import to CITC and its members), sufficiently implicate ERISA preemption such that the Washington Supreme Court was required to find ERISA preemption before ruling

on the procedural requirements of the State APA.

1. CITC's apprenticeship training programs are ERISA plans.

Apprenticeship training programs are covered by ERISA if they fit the definition of an "employee benefit plan," which includes "welfare benefit plans." 29 U.S.C. § 1002(3), Appendix D at p. 1d. In turn, the definition of "welfare benefits plans" expressly extends to "apprenticeship or other training programs" established or maintained by an employer, employee organization or both. *Id.* at § 1002(1), Appendix D at p. 1d.

Based on this language, a number of courts, including the Eight, Ninth and Tenth Circuits and the California Supreme Court, have consistently determined that the plain language of ERISA establishes that apprenticeship training programs are ERISA plans. *Calhoon*, 957 F.2d at 1558; *Boise Cascade Corp.*, 939 F.2d at 637; *Hydrostorage*, 891 F.2d at 727-28; *California Apprenticeship Council*, 841 P.2d at 1018-21.

2. The Washington laws cited by the Washington Supreme Court "relate to" the apprenticeship training programs.

ERISA's preemption provision, 29 U.S.C. § 1144(a), provides that ERISA "shall supersede any and all state laws insofar as they may now or hereafter relate to any employee benefit plan. . . ." Appendix D at p. 2d. Because the Washington laws cited by the Washington Supreme Court "relate to" ERISA plans, including apprenticeship training programs, the Washington Supreme Court was required to find ERISA preemption.

WASH. REV. CODE § 39.12.021 provides that apprentices employed on state public works projects must be paid at different rates, dependent on whether they are working under a WSATC-approved apprenticeship training program. *See* Appendix D at p. 8d. Various federal courts of appeal have held that prevailing wage laws, like WASH. REV. CODE § 39.12.021, "relate to" apprenticeship training programs and are preempted by ERISA. *See Inland Empire Chapter of Associated Gen. Contractors of Am. v. Dear*, 77 F.3d 296, 299-300 (9th Cir. 1996); *Dillingham*, 57 F.3d at 719; *ABC Nat'l Line Erection Apprenticeship Training Trust v. Aubry*, 68 F.3d 343, 347 (9th Cir. 1995); *MacDonald*, 949 F.2d at 275; *Calhoon*, 957 F.2d at 1558-61; *Hydrostorage*, 891 F.2d at 729-30. As the *Inland Empire* court noted, in holding that ERISA preempts the application of WASH. REV. CODE § 39.12.021, Appendix D at p. 8d, it "affects directly the practicality of federally approved apprenticeship programs not approved by the state" because the "practical effect of the lack of state approval [of apprenticeship training programs] is that [contractors] do not employ [apprentices] on state public works projects." 77 F.3d at 298, 300.

The provisions of WASH. REV. CODE § 51.12.130 and WASH. REV. CODE § 19.28.610, Appendix D at pp. 9d-12d, also "relate to" an ERISA plan. WASH. REV. CODE § 51.12.130 extends the coverage of Washington's Workers' Compensation Act, WASH. REV. CODE Title 51, to apprentices enrolled in WSATC-approved apprenticeship training programs. *See* Appendix D at pp. 9d-10d. WASH. REV. CODE § 19.28.610 requires WSATC approval of an apprenticeship training program in order for an apprentice to perform certain electrical utility work without a license. *See* Appendix D at pp. 11d-12d. Both statutes are specifically designed to effect ERISA plans and specifically

refer to apprenticeship training programs. This Court has recognized that a "state statute's express reference to ERISA plans suffices to bring it within [ERISA's] preemptive reach." *Mackey v. Lanier Collections Agency & Service*, 486 U.S. 825, 830, 108 S. Ct. 2182, 100 L. Ed. 2d 836 (1988). Other cases involving apprenticeship training programs have followed *Mackey*. *See, e.g., California Apprenticeship Council*, 841 P.2d at 1024 n.18.

3. The Washington laws cited by the Washington Supreme Court are not saved from ERISA preemption.

ERISA preemption cannot be applied "to alter, amend, modify, invalidate, impair, or supersede any law of the United States . . . or any rule or regulation issued under any such law." 29 U.S.C. § 1144(d), Appendix D at p. 6d. This Court has recognized that state laws and regulations may be saved from preemption based on this clause to the extent their preemption would "impair" a federal law. *Shaw*, 463 U.S. at 102-05. Neither the Washington Supreme Court, nor the Union Respondents or the WSATC in their supplemental briefing, enunciated any potential impairment of federal laws or regulations which would arise from the preemption of the statutes.

The Ninth and Tenth Circuits have specifically held that federal law is not impaired by the preemption of state law similar to RCW 39.12.021. *See, e.g., Calhoon*, 957 F.2d at 1561-62 (federal law not impaired by preemption of prevailing wage law applicable only to apprentices in a state approved apprenticeship training program); *Hydrostorage*, 891 F.2d at 730-32 (same); *see also California Apprenticeship Council*, 841 P.2d at 1025-30 (federal law not impaired by preempting state prohibition

against approval of new apprenticeship training programs that have an "adverse effect" on existing programs). Absent some showing that some federal law would be impaired by preempting them, the state laws cited by the Washington Supreme Court are not saved from preemption by the savings clause of 29 U.S.C. § 1144(d).

B. The Question Whether the Washington Supreme Court's Imposition of an Adjudicative Hearing Requirement to Obtain Approval of Apprenticeship Training Programs Is Preempted by ERISA Is an Important Federal Question That Has Not, But Should Be, Decided by This Court.

As stated above, an analysis of ERISA preemption requires a determination of whether there is an ERISA plan, whether a state law "relates to" the ERISA plan and whether preemption of the state law[7] would impair a federal law or regulation. *See* discussion at p. 12, *supra*. Because an apprenticeship training program is an ERISA plan, *see* discussion at p. 13, *supra*, the remaining ERISA preemption questions are whether the Washington Supreme Court's requirement that an adjudicative hearing be held

---

[7] The Washington Supreme Court's decision to impose an adjudicatory hearing requirement before approval of apprenticeship programs is a state law for purpose of ERISA preemption analysis. Under ERISA, "State law" is defined as "all laws, decisions, rules, regulations, or other State action having the effect of law, of any State." 29 U.S.C. § 1144(c)(1), Appendix D at p. 6d. The Washington Supreme Court's holding, requiring an adjudicatory hearing, plainly has the effect of law.

prior to approving apprenticeship training programs "relates to" such programs and, if so, whether preemption of this requirement would impair the National Apprenticeship Act.

1. The adjudicative hearing requirement imposed by the Washington Supreme Court "relates to" the apprenticeship training programs.

The adjudicative hearing requirement imposed by the Washington Supreme Court specifically refers to apprenticeship training programs. In *MacDonald*, the Ninth Circuit held that the state agency's "intended interpretation and application" of Nevada's prevailing wage law was preempted by ERISA because the state agency's interpretation and application attempted "to reach in one way or another the terms and conditions of employee benefit plans." 949 F.2d at 274. Likewise, the Washington Supreme Court's interpretation and application of the State APA is preempted by ERISA because the court attempted to reach apprenticeship training programs through its decision. Under *Mackey*, 486 U.S. at 830, because the Washington Supreme Court's decision imposing an adjudicative hearing requirement is specifically directed at apprenticeship training programs, it "relates to" an ERISA plan and is preempted. *See* 486 U.S. at 830.

Moreover, the requirement of an adjudicative hearing will cause a real burden to apprenticeship training programs based on the obvious additional expense and delay directly impacting the approval of these programs. There has been no showing by the Respondents that any other state in the nation mandates a similar procedure.

2. The adjudicative hearing requirement imposed by the Washington Supreme Court is not saved from ERISA preemption.

As the California Supreme Court stated in *California Apprenticeship Council*, 841 P.2d at 1026, concerning the ERISA preemption savings clause, 29 U.S.C. § 1144(d):

> *Shaw*. . . teaches that it is not sufficient for purposes of invoking the protection of the [general] savings clause that state law is consistent with or supplements a federal law. Rather, preemption of the state law must have a negative effect on the functioning of, or standards set forth in, the federal law before the general savings clause will extend its protection to the state law.

The Ninth and Tenth Circuits have also applied the teachings of *Shaw* to determine whether particular state laws relating to an apprenticeship training program are saved from ERISA preemption because preemption would impair the National Apprenticeship Act. *Calhoon*, 957 F.2d at 1561-62; *Hydrostorage*, 891 F.2d at 730-32.

In *MacDonald*, 949 F.2d at 274, for example, the court reviewed the National Apprenticeship Act and its implementing regulations as they pertain to state regulation of a BAT-approved apprenticeship training program. The court held that ERISA preemption applied in the following manner:

> The denial of the exemption to the BAT-

> approved JAC apprenticeship program, because it was not also approved by the Nevada State Apprenticeship Council, in effect forces [the] apprenticeship program to comply with the standards of the State Committee, independent and apart from the regulation authorized and provided for by the Fitzgerald Act and its accompanying regulations. The approval of the JAC apprenticeship program by BAT in effect establishes that the program meets the requirements of the Fitzgerald Act, the only apprenticeship regulations that are permissible as not being preempted by section 514(a) of ERISA. Any state regulation inconsistent with that determination is preempted by section 514(a) of ERISA.

949 F.2d at 274.

Because preemption of the Washington Supreme Court's imposition of a requirement that an adjudicative hearing be held prior to approving an apprenticeship training program does not impair the National Apprenticeship Act, it is not saved from ERISA preemption under 29 U.S.C. § 1144(d). First, the National Apprenticeship Act's implementing regulations do not require adjudicative hearings when applications for approval of apprenticeship training programs are contested. *See* 29 C.F.R. § 29.5. Second, the WSATC has not received approval from the BAT to hold such hearings. Under the National Apprenticeship Act, states may apply to the BAT for approval as a State Apprenticeship Agency or Council ("SAC"), and thereby receive authority to approve

apprenticeship training programs pursuant to the standards of 29 C.F.R. § 29.5. *See id.* at § 29.12. States may impose requirements beyond the standards of 29 C.F.R. § 29.5 only if they include in their SAC application a "description of policies and operating procedures which depart from or impose requirements in addition to those prescribed" under the regulations. 29 C.F.R. § 29.12(a)(5). In this case, it is undisputed that the WSATC has never required an adjudicative hearing before approving an apprenticeship training program, and thus certainly could not have applied for this authority through the SAC approval process. The preemption of an adjudicative hearing in Washington would not have a negative effect on the functioning of, or the standards set forth in, the National Apprenticeship Act.

C. The Question Whether the Washington Supreme Court's Imposition of an Adjudicative Hearing Requirement Interferes with the Effective Nationwide Application of the National Apprenticeship Act Is an Important Federal Question Which Has Not Been, But Should Be, Decided By This Court.

The Washington Supreme Court's creation of a requirement that an adjudicative hearing be held prior to approving apprenticeship training programs has national implications not only because the court construed federal law in arriving at its decision but also, and more importantly, because the ruling is contrary to the purpose of the National Apprenticeship Act. *See* 29 C.F.R. § 29.1 *et*

seq.[8]

If the Washington Supreme Court's decision is allowed to stand, it could serve as a precedent for competitors in other states to challenge individual BAT approvals on administrative grounds, exceeding the approval process of 29 C.F.R. § 29.5. This is especially true when considering that approximately 23 states do not maintain SAC status. *See* U.S. Dept. of Lab., Emp. & Training Admin.: Bureau of Apprenticeship & Training, Directory (Jan. 1995). In those 23 states, the BAT approves apprenticeship training programs for both federal and state purposes. If the BAT must potentially administer different federal and state approval systems in each such state (as it would now be forced to do in Washington, were it not a SAC state), this will impose unnecessary

---

[8] The purpose of the Act is:

> to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices, to extend the application of such standards by encouraging the inclusion thereof in contracts of apprenticeship, to bring together employers and labor for the formulation of programs of apprenticeship, [and] to cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship.

29 U.S.C. § 50, Appendix D at p. 7d.

complications and burden on the BAT.[9] In declining a similar hearing process under the National Apprenticeship Act and its implementing regulations, Congress and the Department of Labor undoubtedly understood the obvious: a hearing process that competitors could trigger would not serve the purposes of the National Apprenticeship Act, but only the agendas of the competitors. Indeed, the "formulate and promote" language of the National Apprenticeship Act clearly suggests a congressional intent to do just the opposite. *See* 29 U.S.C. § 50, Appendix D at p. 7d.[10]

Thus, the Washington Supreme Court's requirement that the WSATC hold a formal adjudicative hearing and thereby encourage competitors to raise competitive reasons for denying approval of CITC's or others' training programs interferes with the effective nationwide application of the National Apprenticeship Act. The United States Supreme Court can and should address this issue of national significance.

---

[9] In this regard, it is noteworthy that the Washington Supreme Court was unable to demonstrate how the Union Respondents or anyone else was materially harmed by the lack of an adjudicative hearing. *See* 129 Wn.2d at 584, Appendix A at p. 7a.

[10] This "formulate and promote" language of federal law is replicated in Washington's statutory mandate that the State Council "encourage and promote" the making of apprenticeship agreements. WASH. REV. CODE § 49.04.030(1). This does not constitute legislative direction to encourage competitors to limit additional apprenticeship training programs.

CONCLUSION

For the foregoing reasons, this Petition raises important questions of federal law that should be settled by this Court. Accordingly, Petitioner CITC respectfully prays that a writ of certiorari issue to review the opinion of the Washington Supreme Court.

RESPECTFULLY SUBMITTED this 30th day of January, 1997.

Judd H. Lees*
Kurt E. Linsenmayer
WILLIAMS, KASTNER & GIBBS LLP
P.O. Box 21926
Seattle, WA 98111-3926

*Counsel of Record

APPENDIX A

SEATTLE BUILDING AND CONSTRUCTION TRADES COUNCIL; Painters District Council No. 5; Puget Sound Electrical Apprenticeship and Training Trust; Seattle Area Plumbing and Pipefitting Industry Journeyman and Apprentice Training Committee; Sno-King Sheet Metal Joint Apprenticeship and Training Committee, Appellants,

v.

WASHINGTON STATE APPRENTICESHIP AND TRAINING COUNCIL, Respondent, Construction Industry Training Council Of Washington, Respondent/intervenor.

No. 63074-7.

Supreme Court of Washington. En Banc.

Argued June 11, 1996.
Decided Aug. 8, 1996.

Hafer, Price, Rinehart & Robblee, Richard Robblee, Hugh Hafer, Seattle, for appellants.

Thomas Adkins, Tacoma, Judd H. Lees, Bellevue, Christine Gregoire, Atty. Gen., Lynn Hendrickson, Seattle, for respondent.

MADSEN, Justice.

Respondent Washington State Apprenticeship and Training Council (Apprenticeship Council) approved Respondent-Intervenor Construction Industry Training Council's (CITC's) apprenticeship program pursuant to RCW 49.04. Appellant Seattle-King County Building and Construction Trades Council and others (Appellants) maintain that the Council's approval of apprenticeship programs is subject to the Administrative Procedure Act's provisions for adjudications. We conclude that an adjudicatory proceeding is required and accordingly remand this matter for a formal adjudicatory hearing.

STATEMENT OF CASE

RCW 49.04, enacted in 1941, concerns apprenticeship and training programs ("apprenticeship agreements"). In RCW 49.04.010, the Legislature established the Apprenticeship Council to develop detailed standards for apprenticeship agreements in accord with RCW 49.04, to issue necessary rules and regulations to carry out the intent and purpose of the chapter, and to perform other duties as required. RCW 49.04.010. The Apprenticeship Council consists of seven members, six appointed by the director of the Department of Labor and Industries (three representing employer and three representing employee interests), and the seventh is appointed by the Governor as a public representative. RCW 49.04.010. The Director also appoints a supervisor of apprenticeship within the Department. RCW 49.04.030.

In accord with the legislative directive in RCW 49.04.010, the Apprenticeship Council has adopted rules governing its own procedures and establishing standards for approval and oversight of apprenticeship programs. WAC 296-04. Any organization desiring to register an apprenticeship or training program must submit proposed standards consistent with the statutes and regulations to the

supervisor at least 45 days before the regular quarterly meeting of the Apprenticeship Council. WAC 296-04-005. At the meeting, which is open to the public, the proposed standards are discussed and, by vote of the Council, "approved, disapproved, or approved subject to enumerated changes." WAC 296-04-005.

RCW 49.04.070 provides that election to conform with the provisions of RCW 49.04 is voluntary. However, while compliance with RCW 49.04 is voluntary, Apprenticeship Council approval of an apprenticeship program triggers application of other statutory provisions. Under RCW 39.12.021, employers of Apprenticeship Council registered apprentices are exempted from paying them, on state public works projects, prevailing wage rates for journey level workers in the trade as would otherwise be required. Under RCW 51.12.130, only Apprenticeship Council registered apprentices have workers' compensation coverage while being instructed. RCW 19.28.610 provides that certain Apprenticeship Council registered apprentices may engage in certain electrical utility work without holding an electrician certificate.

In December 1993, CITC applied to the Apprenticeship Council for registration of its apprenticeship training programs pursuant to RCW 49.04. It sought approval of apprenticeship training in the electrical, carpentry, painting, plumbing, heating/air conditioning, and sheet metal trades. CITC's program is intended to provide training for nonunion (open shop) contractors.

Appellants are two union councils, the Seattle-King County Building and Construction Trades Council and Painters District Council No. 5, and three joint labor-management apprenticeship and training committees, Puget Sound Electrical Apprenticeship and Training Trust, Seattle Area Plumbing and Pipefitting Industry Journeyman and Apprentice Training Committee, and Sno-King Sheet Metal Joint Apprenticeship and Training Committee. Almost all affiliate unions of the Seattle Construction and

Building Trades Council represent building trade apprentices, and almost all of the affiliates sponsor, along with employer organizations, apprenticeship programs which are registered with the Apprenticeship Council. The three committees among appellants are such apprenticeship committees, in the electrical, plumbing/heating, and sheet metal trades. Appellants' programs thus provide training in the same areas as CITC's.

At its April 21, 1994 meeting, the Apprenticeship council considered CITC's application for approval of its training program. During this meeting, members of the Apprenticeship Council, and the audience, including members of Appellant Seattle-King County Building and Construction Trades Council, raised a number of concerns about CITC's proposed standards, including claims that the standards were not adequate. The Council voted to approve the program if certain additional conditions were satisfied. On June 28, 1994, the acting secretary of the Apprenticeship Council advised CITC that the conditions had been satisfied and as of that date CITC's program was registered.

Appellants then sought judicial review under the Administrative Procedure Act (APA), RCW 34.05, of the Apprenticeship Council's action approving CITC's program. Appellants argued that the APA required the Apprenticeship Council to hold adjudicatory proceedings when it considered CITC's application. The superior court first orally ruled in favor of appellants. The Apprenticeship Council moved for reconsideration. CITC intervened, filing a memorandum in favor of the Apprenticeship Council. The court then ruled in favor of the Apprenticeship Council and CITC, holding that adjudicatory proceedings were not required by the APA. Accordingly, registration of CITC's program was upheld.

Appellants appealed to this court, which granted direct review.

STANDING

The Apprenticeship Council maintains that Appellants lack standing to seek judicial review of the Council's approval of CITC's apprenticeship program. Under the APA, a person "has standing to obtain judicial review of agency action if that person is aggrieved or adversely affected by the agency action." RCW 34.05.530. A person is so aggrieved or adversely affected when:

(1) The agency action has prejudiced or is likely to prejudice that person;

(2) That person's asserted interests are among those that the agency was required to consider when it engaged in the agency action challenged; and

(3) A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the agency action.

RCW 34.05.530.

These three conditions are derived from federal case law. (FN1) *St. Joseph Hosp. & Health Care Ctr. v. Department of Health*, 125 Wash.2d 773, 739, 887 P.2d 891 (1995). The first and third conditions are often called the injury-in-fact requirement, and the second condition is known as the "zone of interest" test. *Id.* Not only are these particular provisions drawn largely from federal case law, as noted above the APA expressly states the Legislature's intent that "courts should interpret provisions of this chapter consistently with decisions of . . . the federal government . . ." RCW 34.05.001.

The injury-in-fact requirement is satisfied. Where an agency refuses to provide a procedure required by statute or the Constitution, the United States Supreme Court "routinely grants standing to a party" despite the fact that "any injury to substantive rights attributable to failure

to provide a procedure is both indirect and speculative." 3 Kenneth Culp Davis & Richard J. Pierce, Jr., *Administrative Law Treatise* § 16.5, at 31 (3d ed. 1994) (citing *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 109 S.Ct. 1835, 104 L.Ed.2d 351 (1989) and *Mathews v. Edridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)); *see also* 13 Charles A. Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice & Procedure* § 3531.4, at 433 (2d ed. 1984) ("often enough to show that an executive or administrative agency has failed to comply with procedural requirements that might have affected the ultimate decision, even though the decision might well have remained unchanged;" "[f]ailure to comply with procedural requirements of itself establishes sufficient injury to confer standing"). In dicta in *Lujan v. Defenders of wildlife*, 504 U.S. 555, 572 n. 7, 112 S.Ct. 2130, 2142 n. 7, 119 L.Ed.2d 351 (1992), the Court said:

> There is this much truth to the assertion that "procedural rights" are special: The person who has been accorded a procedural right to protect his concrete interests can assert that right without meeting all the normal standards for redressability and immediacy. Thus, under our case-law, one living adjacent to the site for proposed construction of a federally licensed dam has standing to challenge the licensing agency's failure to prepare an environmental impact statement, even though he cannot establish with any certainty that the statement will cause the license to be withheld or altered, and even though the dam will not be completed for many years.

The Court rejected, however, the premise that one with no concrete interest could assert such procedural rights. *Id.* See also, e.g., *Yesler Terrace Community Council v. Cisneros*, 37 F.3d 442, 445-47 (9th Cir. 1994); *Moreau v. Federal Energy Regulatory Comm'n*, 982 F.2d 556, 566-67 (D.C. Cir. 1993); *Empire Power Co. v. North Carolina Dep't of Env't, health & Natural Resources*, 337 N.C. 569, 447 S.E.2d 768, 780-81 (1994).

Thus, contrary to Apprenticeship Council's position, the fact that any economic injury to Appellants may not be immediate, or the fact that the decision of the agency would be no different under formal adjudicatory proceedings is not dispositive of the standing question if Appellants have a concrete interest protectable by a requirement of formal adjudicatory proceedings.

Appellants have asserted such an interest. The United States Supreme Court "routinely recognizes probable economic injury resulting from agency actions that alter competitive conditions as sufficient to satisfy" the injury-in-fact requirement. Kenneth Culp Davis & Richard J. Pierce, Jr., *Administrative Law Treatise*, § 16.4, at 13, § 16.5, at 30-31 (3d ed. 1994) (citing cases); *see, e.g., International Longshoremen's & Warehousemen's Union v. Meese*, 891 F.2d 1374, 1379 (9th Cir. 1989) (union challenged agency certification of foreign workers to load logs in United States waters; because of foreign competition, union members lost opportunity to compete for traditional longshore jobs and this established sufficient injury).

RCW 49.04.030 provides that with the advice and guidance of the Apprenticeship Council, the supervisor of apprentices with the Department of Labor and Industries "shall . . . [e]ncourage and promote the making of apprenticeship agreements conforming to the standards established by or in accordance with this chapter," and "when so authorized by the apprenticeship council, register such apprenticeship agreements as are in the best interests of the apprentice and conform to the standards established by or in accordance with this chapter[.]" RCW 49.04.040 provides for the approval of local and state apprenticeship committees whenever the apprentice training needs of a trade or group of trades justifies establishment of such a committee. The committees "shall devise standards for apprenticeship agreements" "[s]ubject to the review of the council and in accordance with the standards established by [RCW 49.04] . . ." RCW 49.04.040. RCW 49.04.050 sets forth certain required standards for apprenticeship

agreements. WAC 296-04-270(2)(b) states that proposed standards must be consistent with the standards for apprenticeship already approved by the Apprenticeship Council for the industry, trade or craft in question to ensure statewide uniformity of standards to the end that they are "designed to achieve the same levels of skills as existing standards within the state for that industry, trade, or craft."

Existing programs have an interest in contesting what they believe to be inadequate standards in order to prevent entry of new, substandard programs into the market which will deplete the work opportunities of apprentices of existing programs including their own. They also have an interest in attracting qualified apprentices, and additional programs will mean more competition for those apprentices; thus, they have an interest in assuring the competition is on a level field, i.e., only programs complying with statutory and regulatory requirements will obtain Apprenticeship Council approval.

Further, RCW 39.12.021 gives a competitive advantage to Apprenticeship Council approved apprenticeship programs and employers of their apprentices because employers of apprentices in those programs can submit bids reflecting lower wages to registered apprentices. Approval of CITC's programs is thus likely to affect job opportunities for members of Appellants' affiliate unions. In addition, RCW 51.12.130(3) provides a significant incentive for apprentices to participate in an approved program, as workers' compensation coverage and benefits for time spent in training is available. The more programs approved, the more competition there will be among the programs for qualified apprentice candidates.

The second condition of RCW 34.05.530 involves the "zone of interest" test. *St. Joseph Hosp.*, 125 Wash.2d at 739, 887 P.2d 891; *see Association of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 153, 90 S.Ct. 827, 829-30, 25 L.Ed.2d 184 (1970). Resulting from concerns that not every person "potentially affected

by agency action in a complex interdependent society" should be permitted to have judicial review, the "zone of interest" test serves as a filter to limit review to those for whom it is most appropriate. William R. Andersen, *The 1988 Washington Administrative Procedure Act--An Introduction*, 64 Wash. L.Rev. 781, 824-25 (1989). However, although the zone of interest test serves as an additional filter limiting the group which can obtain judicial review of an agency decision, the "test is not meant to be especially demanding." *Clarke v. Securities Industry Ass'n*, 479 U.S. 388, 399, 107 S.Ct. 750, 757, 93 L.Ed.2d 757 (1987). "The test focuses on whether the Legislature intended the agency to protect the party's interests when taking the action at issue." *St. Joseph Hosp.*, 125 Wash.2d at 739-40, 887 P.2d 891 (citing Andersen, 64 Wash. L.Rev. at 825).

Thus, the court's task is to determine whether the Legislature intended that Appellants' interest be protected by the agency. Apprenticeship Council says it considered all the interests it was required to consider under RCW 49.04. Apprenticeship Council maintains that unlike the statutes examined in *St. Joseph Hosp.*, RCW 49.04 does not show legislative intent that cost containment or regulation of competition was intended.

We agree with Appellants, however, that the Apprenticeship Council was required to consider competitor's interests because, as explained above, the statutory and regulatory schemes contemplate that new programs must match the standards of existing programs. Also, the apprenticeship Council is directed by the Legislature to register apprenticeship agreements which are in the best interests of the apprentices, and it is in their best interests that they be treated fairly and uniformly. It follows that the Legislature intended that programs not complying with the statutory and regulatory requirements should not be allowed to compete with the same agency approval as complying programs', and accordingly that the Apprenticeship Council consider complying programs'

interests in seeing that new programs conform to those requirements.

We also note that granting standing to competitors helps assure judicial review. *See St. Joseph Hosp.*, 125 Wash. 2d at 742, 887 P.2d 891 (only competitors with the motivation to challenge improper granting of agency authorization).

FORMAL ADJUDICATORY HEARING

Appellate review of superior court decisions under the Administrative Procedures Act (APA), RCW 34.05, is provided for by RCW 34.05.526. Review is under the standards in RCW 34.05.570. RCW 34.05.570(4)(b) authorizes judicial review when a person's rights are violated by an agency's failure to perform a duty required by law to be performed. Here, the duty the agency allegedly failed to perform was the failure to hold an adjudicatory hearing required by RCW 34.05.422 (1)(b).

The parties dispute whether, in conducting its review, this court should defer either to the superior court, which held that an adjudication under the APA was not required, or to the agency, the Apprenticeship Council.

The issue before the court does not concern the merits of agency action, but whether provisions of the APA apply and require that an adjudicatory hearing be held on an application for approval of an apprenticeship program under RCW 49.04. This issue involves interpretation of provisions of the APA, specifically RCW 34.05.010 (9)(a) and RCW 34.05.422(1)(b). Where the issue is the proper construction of a statute, review is de novo. *King County Fire Protection Dists. v. Housing Auth. of King County*, 123 Wash.2d 819, 825, 872 P.2d 516 (1994); *Pasco v. Public Employment Relations Comm'n*, 119 Wash.2d 504, 507, 833 P.2d 381 (1992). No deference is due any interpretation given by Apprenticeship Council as to legislative intent or the statutes' meaning, as deference to agency interpretation of

a statute is appropriate only where (a) the statute is ambiguous and (b) the agency is charged with its administration and enforcement. *Waste Management of Seattle, Inc. v. Utilities & Transp. Comm'n*, 123 Wash.2d 621, 628, 869 P.2d 1034 (1994); *Pasco v. Public Employment Relations Comm'n*, 119 Wash.2d at 507, 833 P.2d 381; *Cowiche Canyon Conservancy v. Bosley*, 118 Wash.2d 801, 813-14, 828 P.2d 549 (1992).

As to the superior court findings, the general rule is that a superior court's findings are not relevant in appellate review of an agency action; however, where the superior court takes additional evidence under RCW 34.05.562, as it is authorized to do under RCW 34.05.570(4)(b), the appellate court will look to the superior court record. *Waste Management*, 123 Wash.2d at 633-34, 869 P.2d 1034. Thus, superior court findings may be relevant where the claim is that an agency failed to conduct a formal adjudication. In this case, though, there are no material disputed facts and the superior court findings do not affect resolution of the issues in this case.

Appellants maintain that Apprenticeship Council approval of an apprenticeship and training program under RCW 49.04 falls within RCW 34.05.422(1)(b), which provides that "applications for licenses that are contested by a person having standing to contest under the law and review of denials of applications for licenses or rate changes shall be conducted as adjudicative proceedings[.]" RCW 34.05.010(9)(a) defines "license" as "a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by law" with certain exceptions not relevant here. The dispute focuses on whether Apprenticeship Council approval of an apprenticeship program under RCW 49.04 is "required by law" within the meaning of RCW 34.05.010(9)(a). The phrase "required by law" is not defined in the APA.

Apprenticeship Council and CITC maintain that Apprenticeship Council approval of apprenticeship programs is not required by law because compliance with

RCW 49.04 is by its terms strictly voluntary. While compliance with RCW 49.04 is voluntary, Apprenticeship Council approval is a prerequisite to coverage under other statutory provisions. The first of these is RCW 39.12.021. The statute provides that apprenticeship employed on state public works, for whom an apprenticeship agreement has been registered and approved under RCW 49.04, must be paid the prevailing wage rate for apprentices in the trade. However, the statute also provides that absent registration and approval by the Apprenticeship Council, apprentices employed on state public works projects must be paid the prevailing wage rate for journey level workers in the trade. (FN2) RCW 51.12.130 provides that registered apprentices or trainees under RCW 49.04 in supplemental and related instructional classes are considered to be employees of the Apprenticeship Council and subject to RCW Title 51's worker's compensation benefits for the time spent in actual attendance in such classes. Nonregistered apprentices are not entitled to these benefits. RCW 51.12.130(3). RCW 19.28.610 provides that certain registered apprentices can perform certain electrical utility work without an electrician certificate.

The APA definition of "license" does not limit the "required by law" language to the laws administered by the agency. If any statute requires the "approval," "registration" or "similar authorization" (etc.) of the agency, a license "required by law" may be found within the meaning of the APA. In the case of the three statutes relied upon by Appellants, under certain circumstances approval is required to pay apprenticeship level wages, for apprentices to have worker's compensation coverage and benefits, and to engage in certain electrical work, or, stated conversely, it is unlawful to do these things without agency approval.

Under RCW 34.05.001, "courts should interpret provisions of [RCW 34.05] consistently with decisions of other courts interpreting similar provisions of other states, the federal government, and model acts." 5 U.S.C.A. § 551(8) (1996) provides that a "license" includes

"registration" or "other form of permission." 5 U.S.C. § 558(c) (1994) provides that procedural protections are provided when application is made for a license "required by law." (FN3) Federal cases support the conclusion that agency approval in this case is a "license" "required by law." In one case, a medical laboratory had performed certain tests on aliens seeking permanent residency status, and had derived 15 percent of its income from such tests. *New York Pathological & X-Ray Labs., Inc. v. Immigration & Naturalization Serv.*, 523 F.2d 79 (2nd Cir. 1975). Under a new rule, INS designation of a laboratory or other facility as an approved facility was required before it could perform these tests. The laboratory sued over INS's refusal to designate it as an approved facility. The court reasoned that INS's designation as an approved facility was "a license required by law" because absent that approval, the laboratory could not conduct the medical examinations, and held that the agency therefore had to provide notice and hearings when deciding which facilities to designate. *Id.* at 82. In *Blackwell College of Business v. Attorney General*, 454 F.2d 928 (D.C. Cir. 1971), INS withdrew approval from a business college as a place of study for nonimmigrant alien students. The court called such approval "a valuable asset in the nature of a license," *Id.* at 932, and held that INS had to provide procedural safeguards under 5 U.S.C. § 558(c) (1994) before approval could be withdrawn.

In each of these cases the applicants for government approval were not required by law to hold a license for their respective enterprises (laboratory and business school), but the courts nevertheless held that licenses "required by law" were involved because a statute or rule required official approval for certain purposes. The same is true here.

Also supporting Appellants is *Fitch/Larocca Assocs., Inc. v. Skinner*, 106 Ill. App. 3d 522, 62 Ill. Dec. 435, 436 N.E.2d 17 (1982), where the court concluded that prequalifications of architects to work on state construction projects was a license required by law.

Although architects could lawfully work as architects without prequalification, by statute they had to be prequalified to work on state projects. *See also Bois Blanc Island Township v. Natural Resources Comm'n,* 158 Mich. App. 239, 404 N.W.2d 719 (1987) (written permission of agency required to dispose of garbage on state land is license required by law).

CITC points out, though, that the Apprenticeship Council's approval has been construed as not constituting a license required by law in two Attorney General opinions. Br. of Resp't Att'y General Op. 1990 No. 017; Att'y General Op. 1989 No. 12. Generally, opinions of the Attorney General in construing statutes are entitled to great weight, though they are not binding. *Washington Educ. Ass'n v. Smith*, 96 Wash.2d 601, 606, 638 P.2d 77 (1981). The conclusions in both opinions rest on the premise that it is not unlawful to operate an apprenticeship program without Apprenticeship Council approval. While that is true, it fails to account, as we have noted, for other statutes which condition application upon agency approval.

Apprenticeship Council and CITC maintain, however, that approval by the Apprenticeship Council as it relates to the three statutes relates to "benefits," which are distinguishable from "licensees." They point out that "agency action" may include "licensing" or "the granting or withholding of benefits[,]" RCW 34.05.010(3), and argue that a license required by law is not involved where benefits like those under the three statutes are at issue. The distinction drawn in RCW 34.05.010(3) between types of agency action has to do with the fact that many agencies administer benefits such as welfare or unemployment benefits. The distinction does not resolve the present case and the fact that "benefits" in a generic sense may be obtained as a result of agency approval does not preclude the conclusion that agency approval is a "license." Granting of a license often "benefits" a person, such as granting a license to practice medicine.

CITC also maintains that Appellants have failed to establish that any harm results from the lack of formal adjudicatory hearings, argues that the Apprenticeship Council's decision-making process is set by statute, and argues that there is a long history of apprenticeship training regulation which has occurred without adjudicative proceedings. CITC urges that the present system is adequate. The APA does not allow discretion to forego required formal adjudicatory proceedings on the grounds that another system is alleged to be adequate.

We conclude that relief must be granted Appellants under RCW 34.05.570(4)(b) because the agency's failure to hold an adjudicatory hearing was arbitrary and capricious as it failed to follow RCW 34.05.422(1)(b). *See* RCW 34.05.570(4)(c)(iii). Appellants were deprived of significant procedural safeguards available in formal adjudicatory proceedings, including testimony taken under oath, the opportunity for structured cross-examination, and an agency order containing requisite findings, conclusions, and the reasons therefor. *See* RCW 34.05.449(2); RCW 34.05.452(3); RCW 34.05.461(3). Absent compliance with these and other procedural requirements, judicial review of the merits of agency action is significantly hampered and may even be effectively foreclosed. This matter must be remanded for a formal adjudicatory hearing.

We hold that Appellants have standing to seek review of the Apprenticeship Council's approval and registration of CITC's apprenticeship program. We further hold that the APA requires a formal adjudicatory hearing on an application for Apprenticeship Council approval and registration of an apprenticeship program under RCW 49.04. We reverse the superior court, set aside the Apprenticeship Council's approval of CITC's program, and remand this matter for a formal adjudicatory hearing under the APA.

DURHAM, C.J., and DOLLIVER SMITH, GUY, JOHNSON, ALEXANDER, TALMADGE, and SANDERS, JJ., concur.

FN1. Apprenticeship Council maintains that the APA standing requirements are more stringent than the federal standards because Council, APA or standard states that the asserted interests must be "among those that the agency was *required to consider."* RCW 34.05.530(2) (emphasis added). As our reliance on federal case law in *St. Joseph Hosp. & HealthCare Ctr. v. Department of Health,* 125 Wash.2d 733, 887 P.2d 891 (1995) indicates, we will look to federal cases addressing standing. *See also* RCW 34.05.001 (directing that APA be construed consistently with similar federal law); William R. Andersen, *The 1988 Washington Administrative Procedure Act-an Introduction,* 64 Wash. L.Rev. 781, 825 (1989) (noting that United States Supreme Court has backed off from a stringent zone of interest analysis and that under state APA the underlying question is whether the Legislature intended that the agency consider a person's asserted interests). Contrary to Apprenticeship Council's suggestion, moreover, it is not necessary that a statute expressly state that those interests are required to be considered. In *St. Joseph Hosp.*, the court held that the respondent had standing even though no statute expressly stated the agency had to consider respondent's interest. *See* 3 Kenneth Culp Davis & Richard J. Pierce, Jr., *Administrative Law Treatise* § 16.9, at 54 (3d ed. 1994) (statutes explicitly addressing standing are relatively unusual).

FN2. The Ninth Circuit recently held that insofar as RCW 39.12.021 provides that employers of apprentices cannot pay them less than journey level workers' prevailing wage rate on public works projects absent their participation in an approved apprenticeship program, the statute is preempted by the Employment Retirement Income Security Act (ERISA), 29 U.S.C. § 1101 *et seq.* (1994). *Inland Empire Chapter of Associated Gen. Contractors v. Dear,* 77 F.3d 296 (9th Cir. 1996). The

mandate *Inland Empire* has been stayed pending review by the United States Supreme Court of *Dillingham Constr. N.A., Inc. v. County of Sonoma*, 57 F.3d 712 (9th Cir. 1995), *cert. granted*, ___ U.S. ___, 116 S. Ct. 1415, 134 L. Ed. 2d 541 (1996), holding a similar California prevailing wage law preempted by ERISA. Whether ultimately the Court's decision in Dillingham invalidates or even affects RCW 39.12.021 remains to be seen. Our decision in this case does not depend upon the validity of that statute, as it is not the only statute conditioning coverage on Apprenticeship Council approval of an apprenticeship program.

FN.3. Apprenticeship Council maintains federal law is inapposite because the definition of license does not include "required by law." In light of 5 U.S.C. § 558(c) (1994), the federal cases are relevant.

APPENDIX B

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING

SEATTLE BUILDING AND CONSTRUCTION TRADES COUNCIL ("SBT"); PAINTERS DISTRICT COUNCIL NO. 5 ("PDC 5"); PUGET SOUND ELECTRICAL APPRENTICESHIP AND TRAINING TRUST ("ELECTRICAL JATC"); SEATTLE AREA PLUMBING AND PIPEFITTING INDUSTRY JOURNEYMAN AND APPRENTICE TRAINING COMMITTEE ("PLUMBING JATC"); SNO-KING SHEET METAL JOINT APPRENTICESHIP AND TRAINING COMMITTEE ("SHEET METAL JATC"),	)	NO. 94-2-18464-4
Petitioners,	)	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
vs.	)	
WASHINGTON STATE APPRENTICESHIP AND TRAINING COUNCIL ("COUNCIL"),	)	
Respondent,	)	
CONSTRUCTION INDUSTRY TRAINING COUNCIL OF WASHINGTON ("CITC"),	)	
Respondent/Intervenor.	)	

This matter came before the Honorable James Bates, Judge of the above-entitled Court, in open court on May 16, 1995. The petitioners, Seattle Building and Construction Trades Council, et al., appeared by its counsel, Hafer, Price, Rinehart & Robblee, per Richard H. Robblee; the respondent, Washington State Apprenticeship and Training Council, appeared by its counsel Christine O. Gregoire, Attorney General, per Thomas M. Adkins, Assistant Attorney General; and the respondent-intervenor, Construction Industry Training Council, appeared by its counsel, Williams, Kastner & Gibbs, per Judd H. Lees.

The Court has before it two petitions for review, consolidated under one cause number, from a decision of the Washington State Apprenticeship and Training Council (Council) requesting that this Court (1) declare null and void the Council's approval and registration of the Construction Industry Training Council (CITC) and (2) remand the matter to the Council for adjudicatory proceedings. The Court reviewed the administrative record and files herein, including trial briefs and memoranda submitted by all counsel, and heard argument by counsel. Therefore, being fully, informed, the Court makes the following:

FINDINGS OF FACT

1. Petitioners Seattle Building and Construction Trades Council and Painters District Council No. 5 are labor organizations headquartered in King County, Washington.

2. Petitioners Puget Sound Electrical Apprenticeship and Training Trust, Seattle Area Plumbing and Pipefitting Industry Journeyman and Apprentice Training Committee, and Sno-King Sheet Metal Joint Apprenticeship and Training Committee are apprenticeship programs registered by the Washington State Apprenticeship and Training Council.

3. Respondent Council is a state agency authorized by the Legislature to approve and register apprenticeship program applications under RCW 49.04. Council approval and registration of apprenticeship programs is not necessary for a sponsor to operate an apprenticeship program in the state of Washington.

4. Respondent-Intervenor CITC submitted an application to be the sponsor of an apprenticeship program involving six separate trades, which was considered by the Council at its quarterly meeting in April 1994.

5. The Council conducted an open discussion and took public comment during the April quarterly meeting and, by a 4 - 2 vote, approved CITC's application with enumerated changes.

6. On June 28, 1994, CITC began registering apprentices as it had resolved the enumerated changes, requested by the Council, in its program application.

7. Petitioners filed a petition for review on May 18, 1994, and again on July 26, 1994, pursuant to the Washington Administrative Procedures Act. These petitions were consolidated under one cause number as they presented common issues of fact and law for the Court's review.

8. The Council tape recorded the April 1994 meeting and a non-verbatim transcript was prepared from the tapes.

CONCLUSIONS OF LAW

1. This Court has jurisdiction under RCW 34.05.570.

2. The petitions for review were timely filed.

3. The Council does not perform a licensing function as defined in RCW 34.05.010(9)(a) when it considers applications for apprenticeship programs.

4. The Council did not perform a licensing function as defined in RCW 34.05.010(9)(a) when it approved CITC's application for an apprenticeship program.

5. The Council is not required to hold adjudicative proceedings under the Washington Administrative Procedures Act when it considers an application for apprenticeship standards.

6. The Council was not required to hold adjudicative proceedings under the Washington Administrative Procedures Act when it considered CITC's application for apprenticeship standards in April 1994.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED that:

The registration of CITC and its apprenticeship program by the Council under RCW 49.04 is affirmed.

DATED this 21st day of June, 1995.

Honorable James W. Bates, Jr.
Judge of the Superior Court

APPENDIX C

THE SUPREME COURT OF WASHINGTON

SEATTLE BUILDING AND CONSTRUCTION TRADES COUNCIL, et al.,	)	NO. 63074-7
Appellants,	)	ORDER
v.	)	
WASHINGTON STATE APPRENTICESHIP AND TRAINING COUNCIL,	)	
Respondent,	)	
CONSTRUCTION INDUSTRY TRAINING COUNCIL OF WASHINGTON,	)	
Respondent/Intervenor.	)	

The Court having considered the Respondent/Intervenor's Motion for Reconsideration or, in the Alternative, an Interlocutory Order;
Now, therefore, it is hereby

ORDERED:

That the Respondent/Intervenor's Motion for Reconsideration or, in the Alternative, an Interlocutory Order is denied.

DATED at Olympia, Washington this 1st day of November, 1996.

CHIEF JUSTICE

DATE OF ORDER AMENDED TO NOVEMBER 1, 1996, TO CORRECT SCRIVENER'S ERROR.

RONALD R. CARPENTER,
DEPUTY CLERK

APPENDIX D

29 U.S.C. § 1002

For purposes of this subchapter:

(1) The terms "employee welfare benefit plan" and "welfare plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 186(c) of this title (other than pensions on retirement or death, and insurance to provide such pensions). . . .

(3) The term "employee benefit plan" or "plan" means an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan.

29 U.S.C. § 1144

(a) Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under section 4(b). This section shall take effect on January 1, 1975.

(b)(1) This section shall not apply with respect to any cause of action which arose, or any act or omission which occurred, before January 1, 1975.

(2)(A) Except as provided in subparagraph (B), nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.

(B) Neither an employee benefit plan described in section 1003(a) of this title, which is not exempt under section 1003(b) of this title (other than a plan established primarily for the purpose of providing death benefits), nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.

(3) Nothing in this section shall be construed to prohibit use by the Secretary of services or facilities of a State agency as permitted under section 1136 of this title.

(4) Subsection (a) of this section shall not apply to any generally applicable criminal law of a State.

(5)(A) Except as provided in subparagraph (B), subsection (a) of this section shall not apply to the Hawaii

Prepaid Health Care Act (Haw. Rev. Stat. §§ 393-1 through 393-51).

(B) Nothing in subparagraph (A) shall be construed to exempt from subsection (a) of this section--

(i) any State tax law relating to employee benefit plans, or

(ii) any amendment of the Hawaii Prepaid Health Care Act enacted after September 2, 1974, to the extent it provides for more than the effective administration of such Act as in effect on such date.

(C) Notwithstanding subparagraph (A), parts 1 and 4 of this subtitle, and the preceding sections of this part to the extent they govern matters which are governed by the provisions of such parts 1 and 4, shall supersede the Hawaii Prepaid Health Care Act (as in effect on or after January 14, 1983), but the Secretary may entered into cooperative arrangements under this paragraph and section 1136 of this title with officials of the State of Hawaii to assist them in effectuating the policies of provisions of such Act which are superseded by such parts.

(6)(A) Notwithstanding any other provision of this section--

(i) in the case of an employee welfare benefit plan which is a multiple employer welfare arrangement and is fully insured (or which is a multiple employer welfare arrangement subject to an exemption under subparagraph (B)), any law of any State which regulates insurance may apply to such arrangement to the extent that such law provides--

(I) standards, requiring the maintenance of specified levels of reserves and specified levels of contributions, which any such plan, or any trust established under such a plan,

must meet in order to be considered under such law able to pay benefits in full when due, and

(II) provisions to enforce such standards, and

(ii) in the case of any other employee welfare benefit plan which is a multiple-employer welfare arrangement, in addition to this subchapter, any law of any State which regulates insurance may apply to the extent not inconsistent with the preceding sections of this subchapter.

(B) The Secretary may, under regulations which may be prescribed by the Secretary, exempt from subparagraph (A)(ii), individually or by class, multiple employer welfare arrangements which are not fully insured. Any such exemption may be granted with respect to any arrangement or class of arrangements only if such arrangement or each arrangement which is a member of such class meets the requirements of section 1002(1) and section 1003 of this title necessary to be considered an employee welfare benefit plan to which this subchapter applies.

(C) Nothing in subparagraph (A) shall affect the manner or extent to which the provisions of this subchapter apply to an employee welfare benefit plan which is not a multiple employer welfare arrangement and which is a plan, fund, or program participating in, subscribing to, or otherwise using a multiple employer welfare arrangement to fund or administer benefits to such plan's participants and beneficiaries.

(D) For purposes of this paragraph, multiple employer welfare arrangement shall be considered fully insured only if the terms of the arrangement provide for benefits the amount of all of which the

Secretary determines are guaranteed under a contract, or policy of insurance, issued by an insurance company, insurance service, or insurance organization, qualified to conduct business in a State.

(7) Subsection (a) of this section shall not apply to qualified domestic relations orders (within the meaning of section 1056(d)(3)(B)(i) of this title), qualified medical child support orders (within the meaning of section 1169(a)(2)(A) of this title), and the provisions of law referred to in section 1169(a)(2)(B)(ii) of this title to the extent enforced by qualified medical child support orders.

(8) Subsection (a) of this section shall not be construed to preclude any State cause of action--

(A) with respect to which the State exercises its acquired rights under section 1169(b)(3) of this title with respect to a group health plan (as defined in section 1167(1) of this title), or

(B) for recoupment of payment with respect to items or services pursuant to a State plan for medical assistance approved under title XIX of the Social Security Act [42 U.S.C.A. § 1396, et seq.] which would not have been payable if such acquired rights had been executed before payment with respect to such items or services by the group health plan.

(c) For purposes of this section:

(1) The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

(2) The term "State" includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this subchapter.

(d) Nothing in this subchapter shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States (except as provided in sections 1031 and 1137(b) of this title) or any rule or regulation issued under any such law.

26 U.S.C. § 50

The Secretary of Labor is authorized and directed to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices, to extend the application of such standards by encouraging the inclusion thereof in contracts of apprenticeship, to bring together employers and labor for the formulation of programs of apprenticeship, to cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship, and to cooperate with the Secretary of Education in accordance with section 17 of Title 20. For the purposes of this chapter the term "State" shall include the District of Columbia.

WASH. REV. CODE § 39.12.021

Apprentice workers employed upon public works projects for whom an apprenticeship agreement has been registered and approved with the state apprenticeship council pursuant to chapter 49.04 RCW, must be paid at least the prevailing hourly rate for an apprentice of that trade. Any worker for whom an apprenticeship agreement has not been registered and approved by the state apprenticeship council shall be considered to be a fully qualified journey level worker, and, therefore, shall be paid at the prevailing hourly rate for journey level workers.

WASH. REV. CODE § 51.12.130

(1) All persons registered as apprentices or trainees with the state apprenticeship council and participating in supplemental and related instruction classes conducted by a school district, a community college, a vocational school, or a local joint apprenticeship committee, shall be considered as workers of the state apprenticeship council and subject to the provisions of Title 51 RCW, for the time spent in actual attendance at such supplemental and related instruction classes.

(2) The assumed wage rate for all apprentices or trainees during the hours they are participating in supplemental and related instruction classes, shall be three dollars per hour. This amount shall be used for purposes of computations of premiums.

For purposes of computing disability compensation payments, the actual wage rate during employment shall be used.

(3) Only those apprentices or trainees who are registered with the state apprenticeship council prior to their injury or death and who incur such injury or death while participating in supplemental and related instruction classes shall be entitled to benefits under the provisions of Title 51 RCW.

(4) The filing of claims for benefits under the authority of this section shall be the exclusive remedy of apprentices or trainees and their beneficiaries for injuries or death compensable under the provisions of Title 51 RCW against the state, its political subdivisions, the school district, community college, or vocational school and their members, officers or employees or any employer regardless of negligence.

(5) This section shall not apply to any apprentice or trainee who has earned wages for the time spent in

participating in supplemental and related instruction classes.

WASH. REV. CODE § 19.28.610

Nothing in RCW 19.28.510 through 19.28.620 shall be construed to require that a person obtain a license or a certified electrician in order to do electrical work at his or her residence or farm or place of business or on other property owned by him or her unless the electrical work is on the construction of a new building intended for rent, sale, or lease. However, if the construction is of a new residential building with up to four units intended for rent, sale, or lease, the owner may receive an exemption from the requirement to obtain a license or use a certified electrician if he or she provides a signed affidavit to the department stating that he or she will be performing the work and will occupy one of the units as his or her principal residence. The owner shall apply to the department for this exemption and may only receive an exemption once every twenty-four months. It is intended that the owner receiving this exemption shall occupy the unit as his or her principal residence for twenty-four months after completion of the units. Nothing in RCW 19.23.510 through 19.28.620 shall be intended to derogate from or dispense with the requirements of any valid electrical code enacted by a city or town pursuant to RCW 19.28.010(3), except that no code shall require the holder of a certificate of competency to demonstrate any additional proof of competency or obtain any other license or pay any fee in order to engage in the electrical construction trade. RCW 19.28.510 through 19.28.620 shall not apply to common carriers subject to Part I of the Interstate Commerce Act nor to their officers and employees. Nothing in RCW 19.28.510 through 19.28.620 shall be deemed to apply to the installation or maintenance of telephone, telegraph, radio, or television wires and equipment; nor to any electrical utility or its employees in the installation, repair, and maintenance of electrical wiring, circuits, and equipment by or for the utility, or comprising a part of its plants, lines or systems. The licensing provisions of RCW 19.28.510 through 19.28.620 shall not apply to:

(1) Persons making electrical installations on their own property or to regularly employed employees working on the premises of their employer, unless the electrical work is on the construction of a new building intended for rent, sale, or lease; or

(2) Employees of an employer while the employer is performing utility type work of the nature described in RCW 19.28.200 so long as such employees have registered in the state of Washington with or graduated from a state approved outside lineman apprenticeship course that is recognized by the department and that qualifies a person to perform such work.

Nothing in RCW 19.28.510 through 19.28.620 shall be construed to restrict the right of any householder to assist or receive assistance from a friend, neighbor, relative or other person when none of the individuals doing the electrical installation hold themselves out as engaged in the trade or business of electrical installations. Nothing precludes any person who is exempt from the licensing requirements of this chapter under this section from obtaining a journeyman or specialty certificate of competency if they otherwise meet the requirements of this chapter.